



Emergency Homeowners' Loan Program (EHLP): Substantially Similar State Programs

Frequently Asked Questions – December 9, 2010

State Application Requirements

Q: The Federal Register Notice published November 12, 2010, provides very limited information on the program, its implementation, and its assorted requirements. The Program Summary issued by HUD provides more detail but conflicts with the Notice in a variety of ways. In cases where discrepancies exist between the two documents, or in cases where the Program Summary provides more detail, which information is accurate?

A: There may be some inconsistency between the requirements in the Notice, which applies to states with substantially similar programs, and the requirements in the program summary, which applies to the program's operation in the other Schedule A states. As mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, states with pre-existing substantially similar programs are granted greater flexibility in program design.

Q: As it applies to the Notice of Allocation of Funding for Substantially Similar State Programs published in the Federal Register on November 12, 2010, what does the term “obligate” mean?

A: For purposes of the EHLP program, the term “obligate” means that the funds are subject to a binding agreement with individual mortgagors that will result in outlays – immediately or in the future.

Q: Please clarify the expectation for beginning application acceptance. In the Notice, Section III.B.5 says, “...and allows for the commencement of application acceptance by December 31, 2010...,” while Section IV.B second paragraph states, “Each state must also describe in detail the procedures it will use to ensure that it will be able to begin taking applications from homeowners by December 31, 2010...”

A: For HUD to deem a state's program substantially similar to EHLP, the program must have the capacity to begin accepting homeowner's applications for the program by December 31, 2010 and to obligate all allocated funds by September 30, 2011. Applicants responding to the

November 12 Notice must describe how their program will accept applications and obligate funds in the timeframe required by the Notice.

Q: Our state’s program anticipates administrative costs for both the state and sub-recipients, housing counseling costs for participating homeowners, and mortgage assistance payments as being critical elements in the budget. Please confirm that these are considered eligible and indicate other specific budget item expectations that HUD may have.

A: Reasonable administrative costs for the state, housing counseling costs for participating homeowners, and mortgage assistance payments are considered eligible costs. Substantially similar state programs may contract with third parties to provide intake and counseling services, and reasonable costs for such contracts are also eligible.

As described in the November 12 Notice, applicants should describe the administrative costs incurred in operating its current homeowner assistance program. Applicants should also project the administrative costs incurred to implement the program with HUD assistance made available through EHLP, including the costs related to planning and implementing the program and the costs associated with the preparation and submission of HUD reports, etc.

State Reporting and Monitoring Requirements

Q: Reporting requirements are to be submitted on a “regular basis.” Please define this and indicate what loan and homeowner data substantially similar state programs will be required to report to HUD.

A: Substantially similar state programs will be responsible for tracking and reporting program data, including data on assistance approval and termination, to HUD. Additional guidance on substantially similar state data reporting requirements shall be forthcoming from HUD.

Q: After approving a homeowner for program assistance, will the substantially similar state program have audit responsibility for verifying whether or not the approved borrower has recovered sufficient income to make their monthly mortgage payments, and are otherwise no longer eligible for assistance?

A: HUD expects substantially similar state programs to utilize their existing procedures to terminate a borrower’s assistance. Substantially similar state programs will be responsible for tracking and reporting program data, including data on assistance approval and termination, to HUD. Additional guidance on substantially similar state data reporting requirements shall be forthcoming from HUD.

Q: What time period of administrative responsibility and monitoring does HUD assume states will have and how will those costs be covered?

A: While borrowers are receiving EHLP assistance, substantially similar state programs will be responsible for tracking and reporting program data, including data on assistance approval and termination, to HUD. Additional guidance on substantially similar state data reporting

requirements shall be forthcoming from HUD. The funding allocations listed on Schedule A of the November 12 Notice include reasonable administrative costs for this reporting.

After a borrower leaves the program and his/her assistance ends, the FHA Servicing Center will be responsible for tracking, servicing and releasing the loans.

Q: After a homeowner's assistance ends, will substantially similar state programs be required to service and monitor the loan until it is repaid? Or will the FHA National Servicing Center handle the long-term monitoring and servicing?

A: The FHA National Servicing Center will be responsible for tracking, servicing, and monitoring all loans (both administered under EHLP and under substantially similar state programs) once a borrower leaves the program and his/her assistance ends.

Eligible Homeowners

Q: The November 12 Notice says that for HUD to deem a state's program substantially similar to EHLP, the state program must provide assistance to a homeowner who has income less than or equal to 120 percent of the area median income (AMI). Are substantially similar state programs expected to define 120 percent AMI income limits, or will HUD provide these income figures?

A: For purposes of the Neighborhood Stabilization Program, the HUD website provides estimates for 120% area median income limits (adjusted for family size) at the following link: <http://www.huduser.org/portal/datasets/NSP.html>

A state operating a substantially similar program may also use these HUD-provided figures for purposes of the Emergency Homeowners' Loan Program, but has the discretion to use an alternative method of their choosing or may even decide to target the program more tightly.

Q: How will substantially similar state programs qualify homeowners who did not file a tax return?

A: HUD does not require substantially similar state programs to use any particular method for the verification of applicant income. HUD expects substantially similar state programs to utilize their existing procedures to qualify homeowners for assistance, within the parameters of the EHLP statute.

Q: If a homeowner loses income as a result of a medical condition, is there a timeframe for which the condition is considered permanent with no chance of resuming a normal income level?

A: HUD expects substantially similar state programs to utilize their existing criteria for determining whether a borrower has a reasonable likelihood of being able to resume full responsibility for payment of his/her monthly mortgage and all other household debt obligations when the assistance ends.

Q: Since October 1, 2010, my state program has been reviewing its loan approvals to see if they will meet the EHLP guidelines. If my program is designated a substantially similar state program, will it be able to *back fund* eligible loans?

A: No. To be eligible for assistance from a substantially similar state program, homeowners must meet the eligibility requirements specified in the Notice and other requirements established by the state. Substantially similar state programs will be able to use HUD EHLP funds for eligible homeowners who have been approved for assistance after the state receives its allocation but prior to October 1, 2011.

Q: What loan-to-debt ratios and/or underwriting standards does HUD expect states to use in determining the “reasonable likelihood of being able to resume repayment of the first mortgage”?

A: HUD expects substantially similar state programs to utilize their existing criteria for determining whether a borrower has a reasonable likelihood of being able to resume full responsibility for payment of his/her monthly mortgage and all other household debt obligations when the assistance ends.

Q: Does HUD have a limit on when a property is considered in foreclosure as opposed to "at risk" of foreclosure? My state's existing program assists homeowners up to the point that the property is actually auctioned on the courthouse steps. Will HUD allow this with its funds? Or is there a point at which HUD expects agencies to step away (such as when the foreclosure is entered into the docket)?

A: HUD does not require substantially similar state programs to use any particular method for determining when a property is considered in foreclosure as opposed to “at risk” of foreclosure. HUD expects substantially similar state programs to utilize their existing procedures for providing assistance to homeowners as long as the state exercises good judgment in determining which homeowners have a “reasonable likelihood of being able to resume repayment of the first mortgage obligations, and meet other housing expenses and debt obligations, when the assistance ends.”

Eligible Assistance

Q: If a homeowner is in default but his/her income is sufficient to cover ongoing mortgage payments, can a substantially similar state program provide assistance for arrears only?

A: No. Section III.B.6.b.i, “Eligible assistance,” of the Notice published in the Federal Register on November 12, 2010, states that “Assistance provided to the eligible homeowner must be assistance directed at making payments on the first mortgage of the mortgaged property.” Assistance must include ongoing monthly mortgage payment assistance in addition to arrearages.

Q: The Program Summary provides information on repayment that includes a five-year declining balance, zero interest, nonrecourse loan while the Notice just references repayment in accordance with a HUD mortgage document. Which approach is to be used?

A: Assistance provided to homeowners through state programs that HUD deems substantially similar to EHLP must be secured by a HUD Note (declining balance, zero interest, nonrecourse loan).

HUD is in the process of finalizing the loan agreements and mortgage documents. After finalization, HUD will provide substantially similar state programs with the relevant program documents as soon as possible.

Q: HUD will not allow funds to be used for first mortgages. If a borrower is current on his second mortgage, but not his first, can he/she still receive a loan under this program? What if the borrower has an outstanding line of credit? Will this impact a substantially similar state program's ability to provide loans as well?

A: This is incorrect. The funds under the EHLP or substantially similar program are intended to assist homeowners with making their first lien mortgage payments. Beyond that, HUD does not require substantially similar state programs to take into account second lien or outstanding lines of credit unless it affects the ability of the homeowner to resume repayment of the first lien mortgage obligations and other housing expenses when assistance ends.

Q: What is HUD's position on using funding to pay for delinquent condominium fees, HOA fees, or ground rents that are delinquent?

A: Under the EHLP administered by HUD, funds can be used to pay arrearages of mortgage principal, interest, mortgage insurance premiums, taxes, hazard insurance, ground rents, homeowners/condominium association fees, and certain foreclosure-related legal fees, as applicable. HUD does not require substantially similar state programs to use any particular method for determining which types of arrearages to pay. HUD expects substantially similar state programs to utilize their existing procedures for paying delinquent mortgage-related expenses.

Q: Will the borrower's required contribution to his/her mortgage payment, if applicable, be put back into the pool of funds available for a substantially similar state program to lend? For example, if a borrower is required to contribute \$500 per month to his/her mortgage payment, are the HUD funds replenished by the \$500 so the substantially similar state program can assist more borrowers? Or do the borrower's contributions go back to HUD?

A: Under the EHLP program administered by HUD, borrower contributions will be combined with Emergency Homeowner Loan Program funds and forwarded to the servicer/lender as the monthly payment on the first lien mortgage. HUD does not require substantially similar state programs to use any particular method for handling borrowers' contributions to their monthly mortgage payments. HUD expects substantially similar state programs to utilize their existing procedures for handling borrower contributions.

For a substantially similar state program, any required borrower contribution is not expected or otherwise required to be returned to HUD. HUD may, however, recapture EHLP funds from a substantially similar state program if the program fails to obligate its allocated funds according to the requirements of the Notice or if a borrower's loan becomes due and payable under the program rules and the borrower submits a full or partial repayment of their emergency loan.

Termination and Repayment of Homeowners' Assistance

Q: If a borrower fails to make his/her required mortgage payment contribution, is that borrower permanently out of the program or can he/she be reinstated once the past due payment is received?

A: HUD expects substantially similar state programs to utilize their existing procedures to terminate and/or reinstate assistance. As described in Section III.B.6.d of the Notice, to be considered substantially similar, a state's program must provide for termination of assistance under conditions comparable to when a homeowner defaults on his/her monthly mortgage payment contribution.

Q: Events triggering note repayment in the Program Summary include details on how net proceeds from selling or refinancing debt on the home are to be handled. The Notice is silent. Which should be considered?

A: The events triggering note repayment in the Program Summary apply to the EHLP administered by HUD. As described in Section III.B.6.d of the Notice, to be considered substantially similar, a state's program must provide for termination of assistance under conditions comparable to when the homeowner no longer resides in, sells, transfers or otherwise conveys, or refinances, in which the borrower draws cash, the mortgaged property. HUD expects substantially similar state programs to utilize their existing procedures to handle net proceeds from selling or refinancing debt on the home. Any full or partial repayment of the emergency assistance will be repaid to HUD.

Q: If a borrower refinances his/her home and draws cash that is insufficient to repay the emergency assistance in full, does HUD require a minimum loan-to-value ratio for the debt to be forgiven? Or can a borrower refinance any portion of his/her equity and still be forgiven?

A: HUD expects substantially similar state programs to utilize their existing procedures to allow and/or disallow debt forgiveness. As described in Section III.B.6.d of the Notice, to be considered substantially similar, a state's program must provide for termination of assistance under conditions comparable to when the homeowner no longer resides in, sells, transfers or otherwise conveys, or refinances, in which the borrower draws cash, the mortgaged property. Any full or partial repayment of the emergency assistance will be repaid to HUD.

Q: Will substantially similar state programs be responsible for interpreting and handling the partial payoffs resulting from refinances, sales, foreclosures or short sales?

A: HUD expects substantially similar state programs to utilize their existing procedures to allow and/or disallow partial payoffs. Any full or partial repayment of the emergency assistance will be repaid to HUD.

Q: Where do the homeowners' repayments go and how are they to be processed?

A: HUD expects substantially similar state programs to utilize their existing procedures to handle any homeowners' repayment of emergency mortgage assistance. Any full or partial repayment of the emergency assistance will be repaid to HUD.

Miscellaneous

Q: Are staff members who underwrite loan requests for a substantially similar state program subject to the SAFE Act?

A: HUD is finalizing its SAFE Act rule and will publish it in the Federal Register soon. In the meantime, you should follow your state's current laws and regulations regarding licensing and registration under the SAFE Act.

Q: When will substantially similar state programs see the HUD loan agreements and mortgage documents that will be used for the program?

A: HUD is in the process of finalizing the loan agreements and mortgage documents. After finalization, HUD will provide substantially similar state programs with the relevant program documents as soon as possible.

Q: Will HUD require that assisted borrowers take out a title insurance policy as a condition of closing on this Federal loan assistance?

A: The mortgagor should already have a title insurance policy under their first mortgage, to which the EHLF loan shall be subordinated. As such, applicants who are approved for EHLF assistance will not be required to take out title insurance at the settlement of the HUD note. Applicants must simply provide documentation of title insurance on their first mortgage as a part of their overall application submission.